

**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY**

WRIT APPEAL NO. 1312 OF 2006

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Between:

Mamidi Sujatha & others

..... Appellants

AND

The Revenue Divisional Officer, Srikakulam & others

.....Respondents

:: J U D G M E N T ::

Counsel for the appellants : Shri O. Manohar Reddy

Counsel for the respondents : Government Pleader for
Revenue

Dated: 15.12.2006

Per G.S.SINGHVI, CJ

Rules of natural justice are multi-faceted. Different dimensions of the rules of natural justice have been applied by the Courts for striking down administrative/executive actions. One of the most accepted and recognized rules of natural justice is that no person shall be condemned unheard. The expansive meaning given to this rule, which is also described as the rule of audi alteram partem means that before any action is taken by a public authority against an individual or an order is made which visits an individual with civil consequences, the person concerned must be given an action-oriented notice, he must be informed of the material sought to be used against him, a reasonable opportunity be given to him to represent his cause and to controvert the material sought to be used against him, the authority concerned must objectively consider his explanation/reply/representation and assign reasons for not accepting the same. The requirement of recording of reasons and communication thereof to the affected person has been treated as an integral part of the duty cast on every quasi-judicial and even administrative authority, which is entrusted with the task of deciding lis between the parties or passing an order adversely affecting the rights of the individuals.

The above-stated propositions have been culled out by us from the judgments of the Supreme Court in **State of Orissa v.**

Dr. Binapani Dei^[1], **A.K. Kraipak v. Union of India**^[2], **S.L.**

Kapoor v. Jagmohan^[3], Swadeshi Cotton Mills Co. Ltd. v. Government of U.P.^[4], Maneka Gandhi v. Union of India^[5], M/s Harinagar Sugar Mills v. Shyam Sunder^[6], M.P. Industries Limited v. Union of India^[7], Bhagat Raja v. Union of India^[8], Mahabir Prasad Santosh Kumar v. State of U.P.^[9], Travancore Rayons Ltd. V. Union of India^[10], Ajanta Industries v. Union of India^[11], M/s Siemens Engg. Manufacturing Co. v. Union of India^[12] and S.N. Mukherjee v. Union of India^[13].

We have taken note of the above-mentioned legal position because after perusing the record of the case and hearing Shri O. Manohar Reddy, learned counsel for the appellants and learned Government Pleader for Revenue, we are convinced that order dated 10.10.2006 passed by Revenue Divisional Officer, Srikakulam (respondent No.1) cancelling the assignment of small parcels of land made in favour of the appellants was vitiated due to patent violation of the rule of audi alteram partem and the learned Single Judge gravely erred by non-suiting them on the spacious ground of availability of alternative remedy.

The appellants belong to the class of have-nots of the society. They were assigned land in Amudalavalasa Village, Srikakulam District some time in 1993 for construction of houses. There is a dispute between the parties on the issue of construction of houses inasmuch as, while the appellants have claimed that they have built kacha houses, the respondents have come up with the plea that the land assigned to the appellants is vacant and is

being used by lorry owners' welfare association for parking of lorries. However, we do not consider it necessary to adjudicate on this contentious issue because the undisputed facts brought on the record of the case show that in response to show cause notice dated 04.04.2005 issued by Mandal Revenue Officer, Amudalavalasa to the appellants to show cause as to why steps may not be taken to cancel their pattas on the ground of violation of the conditions of assignment, the latter had filed a detailed reply stating therein that they have constructed houses and have not violated the conditions of assignment, that their thatched houses were demolished by the government in the process of road widening, but without considering their reply in an objective manner and by simply relying on the proposals submitted by the Mandal Revenue Officer, respondent No.1 cancelled the assignment by repeating the rhetoric that the appellants have violated the conditions of BSO 15(2). The learned Single Judge non-suited the appellants on the ground of availability of alternative remedy by observing that their plea regarding violation of the rules of natural justice cannot be accepted.

Shri O. Manohar Reddy assailed the order of respondent No.1 by arguing that his failure to consider the detailed representation made by the appellants in response to notice dated 04.04.2005 issued by the Mandal Revenue Officer has not only resulted in patent violation of the rules of natural justice, but has also caused grave injustice to his clients. Shri Reddy emphasized that the appellants, who are members of backward class, belong to the poorest of poor among the citizens of this country and,

therefore, the assignment made in their favour could not have been quashed without due consideration of the representation made by them. Learned counsel emphasized that notice dated 04.04.2005 issued by the Mandal Revenue Officer did not contain a proposal for cancellation of the assignment. It merely gave an indication that if an explanation is not given in the matter of alleged violation of the conditions of assignment, steps will be taken for cancellation of the pattas. Learned counsel further argued that the order passed by respondent No.1 is illustrative of total non-application of mind by the officer concerned inasmuch as, he did not even advert to the reply filed by the appellants. Learned counsel criticized the order of the learned Single Judge and argued that the rule of alternative remedy could not have been invoked for non-suiting the appellants because the order impugned in the writ petition is vitiated due to patent violation of the rules of natural justice.

Learned Government Pleader supported the order under challenge and argued that even though order dated 10.10.2006 passed by respondent No.1 does not show consideration of the reply submitted by the appellants in response to notice dated 04.04.2005, the Court may not invalidate the cancellation of pattas of the appellants because they failed to raise construction within the time specified in the order of assignment. He submitted that the appellants appear to have transferred the assigned land to the lorry owners' welfare association and respondent No.1 rightly relied on the report submitted by the Mandal Revenue Officer and the opinion expressed by the Assistant Government Pleader for cancellation of pattas.

We have given serious thought to the argument of the learned Government Pleader, but have not felt impressed. Rather, we are convinced that the order passed by respondent No.1 smacks of patent arbitrariness and gross violation of the basics of natural justice, which resulted in failure of justice. We are also convinced that the learned Single Judge gravely erred by non-suiting the appellants on the ground of availability of alternative remedy. The rule that the High Court will not entertain petition under Article 226 of the Constitution of India if an effective alternative remedy is available to the petitioner is subject to three well-recognized exceptions, one of which is that if the action complained of has been taken in breach of the rules of natural justice, then the Court will entertain petition under Article 226 of the Constitution of India – **Babu Ram v. Zilla Parishad**^[14] and **Harbanslal Sahnia v. Indian Oil Corporation Ltd.**^[15].

A reading of the order under challenge shows that the learned Single Judge brushed aside the appellants' objection to order dated 10.10.2006 on the ground of violation of the rules of natural justice without assigning any reason. This cannot be termed as a satisfactory adjudication of the appellants' challenge to order dated 10.10.2006, perusal of which shows that while taking cognizance of the report and proposal submitted by the Mandal Revenue Officer and the opinion of the Assistant Government pleader, Amudalavalasa, the officer concerned conveniently ignored the detailed replies filed by the appellants in response to notice dated 04.04.2005. This, by itself, should have

been treated by the learned Single Judge as sufficient to invalidate the order which was subject matter of the writ petition. We would have further delved into the matter and even imposed costs on respondent No.1, but refrain from adopting that course because the officer, who passed the order, has not been impleaded as party by name and, as such, he cannot be given notice and opportunity to represent his cause against the imposition of costs.

In the premise aforesaid, the appeal is allowed. The order of the learned Single Judge is set aside. As a sequel to this, the writ petition filed by the appellants is allowed and order dated 10.10.2006 passed by respondent No.1 is quashed.

In view of the above, W.A.M.P.No.2780 of 2006 filed by the appellants for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

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[\[1\]](#) AIR 1967 SC 1269

[\[2\]](#) AIR 1970 SC 150

[\[3\]](#) AIR 1981 SC 136

[\[4\]](#) (1975) 4 SCC 378

[\[5\]](#) AIR 1978 SC 597

[\[6\]](#) AIR 1961 SC 1669

[\[7\]](#) AIR 1966 SC 671

[\[8\]](#) AIR 1967 SC 1606

[\[9\]](#) AIR 1970 SC 1302

[\[10\]](#) AIR 1971 SC 862

[\[11\]](#) AIR 1976 SC 437

[\[12\]](#) AIR 1976 SC 1785

[\[13\]](#) AIR 1990 SC 1984

[\[14\]](#) AIR 1969 SC 556

[\[15\]](#) (2003) 2 SCC 107